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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JAMES A. CRACOLICI and
DANIELLE C. CRACOLICI

Case No.

Plaintiffs,

COMPLAINT

JURY TRIAL DEMANDED

v.

CRAIG JAMES SAUNDERS, EBAY, INC,
and PAYPAL, INC.

Defendants.

Plaintiffs, James A. Cracolici and Danielle C. Cracolici ("Plaintiffs"), files this Complaint against defendants Craig James Saunders ("Saunders"), eBay, Inc. ("eBay") and Paypal, Inc. ("Paypal") and alleges as follows:

NATURE OF THE ACTION

1. The instant action arises out of a fraudulent transaction perpetrated by Saunders through use of the eBay's and Paypal's sales, shipping and payments systems.

2. On March 16, 2018 Saunders purchased a rare comic book known as Tales of Suspense #39 (First Appearance of Ironman, Marvel Comics, 1963, Certificate Number 1010098002) from Plaintiffs for \$7,680 and submitted payment through Paypal's payment system. Following delivery, Saunders instituted a fraudulent claim through Paypal for the return of his money due to non-delivery despite delivery confirmation. Paypal returned Saunder's

money despite being provided evidence of the rare comic's delivery. Saunders is now in possession of the Plaintiffs' rare comic book as well as any and all funds he purportedly tendered for the transaction. Saunders fraudulently induced Plaintiffs into parting with the rare comic book with the promise of being paid value for it, knowing he would ultimately never pay for the item. He further was unjustly enriched by obtaining a rare comic book for no cost. Through the use of Paypal in his fraudulent scheme he committed RICO wire fraud as defined by 18 U.S.C sections 1961-1968.

3. eBay uses deceptive trade practice and induces Sellers to use their shipping label portal by immediately redirecting a Seller to its shipping label portal and providing incentives such as discounts on shipping. Further, eBay promotes the use of Paypal (an eBay subsidiary from 2002-2014) for payments. Immediately upon the sale of an item eBay redirects you to its shipping label portal. eBay further warns users that if they opt to not use Paypal for their shipping portal, they could be left unprotected.

4. eBay and Paypal know that the United States Postal Service does not provide signature confirmation for Priority Mail International Shipments and eBay knows that Paypal will return a buyer's money if they claim non-receipt without signature confirmation, yet intentionally continues to limit international shipping options to only USPS who does not offer the same. eBay and Paypal are participating in a conspiratorial scheme to defraud customers through their integrated systems. eBay and Paypal have committed RICO violations (18 U.S.C sections 1961-1968) by knowingly aiding and abetting Saunders in committing wire fraud.

5. Plaintiffs seek damages in an amount to be determined at trial, but believed to exceed jurisdictional minimums together with attorneys' fees and costs.

THE PARTIES

6. Plaintiffs James A. Cracolici and Danielle C. Cracolici are adult individuals, residing in the State of New York, County of Rockland.

7. Defendant Craig James Saunders is an adult individual, residing in the Town of Waterdown, Province of Ontario, in the Country of Canada.

8. Defendant eBay, Inc. is a foreign corporation organized under the laws of the State of Delaware with its principal place of business located at 2065 Hamilton Avenue, San Jose, California 95125. eBay is registered to do business in the State of New York under DOS ID#2759288 and designates service within the state at C/O CT Corporation System, 111 Eight Avenue, New York, New York, 10011.

9. Defendant Paypal, Inc. is a foreign corporation organized under the laws of the State of Delaware with its principal place of business located at 2211 North First Street, San Jose, California 95131. Paypal is registered to do business in the State of New York under DOS ID#2779236 and designates service within the state at C/O CT Corporation System, 111 Eight Avenue, New York, New York, 10011.

JURISDICTION AND VENUE

10. This Court has jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000.

11. Venue is proper in this district pursuant to 28 U.S.C. § 1391(a). Plaintiffs are subject to general and personal jurisdiction in New York. Defendants eBay and Paypal regularly conduct business in New York and has expressly consented to personal jurisdiction in New

York. Defendant Saunders consented to New York as a jurisdiction by conducting business with the Plaintiffs in the subject transaction through the eBay website.

12. All conditions precedent to bringing this action have been performed, have been waived, or have occurred.

FACTUAL ALLEGATIONS

PLAINTIFFS' USE OF EBAY SYSTEM TO SELL CHILDHOOD COMIC BOOKS

13. In 1988, at the age of 11, Plaintiff James A. Cracolici began collecting comic books with his father. From 1989 through 1990 Mr. Cracolici collected a number of rare comic books, including a rare comic book known as Tales of Suspense #39 ("TOS39") which is the first appearance of the superhero, Iron-Man.

14. On May 2, 2008 Marvel Studios produced and Paramount Pictures distributed a film adaptation of the TOS39 known as 'Iron-Man' which kicked off the highly successful series of movies known as the Marvel Cinematic Universe ("MCU"). The MCU has produced 18 films in 10 years and has an additional 14 more in various states of production.

15. In 2008, due to the anticipated value appreciation with the released movie, Plaintiff James A. Cracolici had TOS39 graded by Certified Guaranty Company, LLC and received an extremely high 7.5 Restored Grade and the comic was registered with Certificate Number 1010098002. Plaintiff James A. Cracolici decided to hold on to the comic as its value increased.

16. In March 2018, Mr. and Mrs. Cracolici decided to begin to sell some of the childhood comic book collection. Plaintiffs are not sophisticated or commercial comic distributors and therefore discussed the matter with local comic book stores. These comic book stores wanted a 40% commission on the sale of rare comics. The Plaintiffs decided that eBay's fees were

significantly more competitive and decided to use eBay's platform to allow people to purchase or bid on the books.

17. On or about March 15, 2018 Plaintiffs created an eBay account "classic.comics77" to facilitate the sale of the comic books. On the same date, Plaintiff listed TOS39 for sale at a "Buy it Now" price of \$7,680. The item was listed as being shipped by the United States Postal Service ("USPS") Priority International Mail to locations outside of the United States.

SAUNDER'S FRAUDILENT TRANSACTION

18. On March 16, 2018 Defendant Saunders purchased the comic book for \$7,680 (plus \$53.67 shipping, totaling \$7,733.67) under an eBay account "kal-elmanofsteel" and submitted payment through Paypal's payment system.

19. Upon notice of sale, eBay directed the Plaintiffs to its shipping label portal. Plaintiffs attempted to select the item for "signature confirmation" and eBay's system returned an error message:

"Delivery Confirmation is not available for this shipping service for the destination country that you have selected."

A true and correct copy of eBay's signature confirmation error message on TOS39 is attached as **"Exhibit A."**

20. Plaintiffs then attempted to select another shipping method through eBay. The only other option provided was Federal Express. However, when Plaintiffs attempted to print a shipping label for Federal Express, eBay's system returned the following error message:

"FedEx shipping labels cannot be created for international orders that are more than \$2,500.00. Please Select USPS instead."

A true and correct copy of eBay's FedEx error message on TOS39 is attached as **"Exhibit B."**

21. With no other alternative and lacking experience in the process and dangers, the Plaintiffs were induced by eBay to then use the only available shipping method, *to wit*, USPS Priority International shipping.

22. On March 23, 2018, TOS39 was shipped to Saunders bearing USPS tracking number HJ684481362US¹. Delivery confirmation provided by USPS and the Canadian Post Office shows TOS39 was delivered to Saunders on March 27, 2018. A true and correct copy of USPS' and Canada Post's tracking information are annexed as **Exhibit "D"**.

23. Following notice of delivery, Saunders contacted the Plaintiffs claiming the item was not delivered. Plaintiffs contacted both Canada Post and the United States Post Office to confirm delivery to Saunders' address. On March 28, 2018 at 7:24 p.m. the United States Postal Service responded to the Plaintiffs' official request for inquiry by sending a confirmation email that the item was delivered to the Saunders. A true and correct copy of USPS's inquiry response is annexed hereto as **Exhibit "E"**.

24. On March 28, 2018 Plaintiffs contacted eBay and spoke with the "high worth item customer disputes desk" and was advised by eBay that it was confirmed in their system that the item was delivered to the Saunders' address. eBay advised Plaintiffs that Saunders should contact eBay to open a claim with them if he is claiming the rare comic book was not delivered. On the phone call, the eBay representative advised that the case would be closed in the Plaintiffs' favor as

¹ An initial Mailing was done on 3/16/18 from eBay's shipping system. The United States Postal Service tracking number was HJ688457942US. The initial mailing was rejected by customs because Defendant Saunders failed to provide his full name; using only "CJ Saunders"; rather than his full legal name. Customs had the item returned to Plaintiffs. Plaintiffs requested the Defendant Saunderson's full name and he responded that it was "C James Saunders". Plaintiffs called eBay to confirm whether mail addressed to a "C James Saunders" would clear customs. The eBay representative confirmed that it would not and that the Defendant Saunders needed to provide his full name. The representative from eBay further advised Plaintiffs that it was the fault of the buyer for not providing his full name for international delivery through customs. (See customs rejection forms annexed hereto as **Exhibit "C"**)

Saunders is in possession of the item and he would then be able to work with them to obtain redress.

25. Rather than contacting eBay, as requested, Saunders completed his fraudulent scheme by contacting Paypal, requesting a refund.

26. In response to Saunders' claim with Paypal, the Plaintiffs provided documentary evidence of the delivery of TOS39's delivery to Defendant. Saunders provided no evidence of the item not being delivered. Despite providing Paypal with evidence that Saunders is in possession of TOS39, Paypal removed funds including, but not limited to, the \$7,680 (plus shipping) from the Plaintiffs' account and returned the money to Saunders. A true and correct copy of Paypal's claim decision and removal of funds from Plaintiffs' account is annexed hereto as **Exhibit "F"**.

27. This is not the first time that Saunders has defrauded an eBay Seller. On July 12, 2006 Saunders received the following feedback from another eBay user that states:

"SELLER STEALS, SELLS FAKES, 3 EBAYERS SENT ITEMS BACK/KEPT FUNDS TOO! \$1500, EMAIL me!"

A true and correct copy of Saunders' eBay feedback is annexed hereto as **Exhibit "G"**.

28. TOS39 is a one of a kind item, which cannot be replaced. In 2012 a graded 9.6 sold for \$375,000. According to comicspriceguide.com, a 7.5 graded TOS39 is currently worth \$7,680.

29. Through his fraudulent actions, and eBay's and Paypal's aiding and abetting, Defendant Saunders is now in possession of the Plaintiffs' rare comic book as well as any and all funds he purportedly tendered for the transaction.

FIRST CAUSE OF ACTION
(Fraud & Fraudulent Inducement - Saunders)

30. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 29 above, as if fully set forth herein.

31. Defendant Saunders made affirmative material representations to, and fraudulently concealed from Plaintiffs, Defendants' willingness to perform payment obligations and honor the agreed to purchase TOS39.

32. Saunders's representations were material to Plaintiffs' decision to ship TOS39 to the Plaintiff believing they had been paid through Paypal for the transaction.

33. However, the facts now known indicate that Saunders had no intention of fulfilling the payment obligations to Plaintiffs.

34. Instead, upon receipt of TOS39, he submitted a claim to Paypal claiming he did not receive the rare comic book knowing that Paypal would refund his money. The listing on eBay clearly stated that the package would be shipped with USPS International Priority Mail. Saunders knew that USPS Priority International Mail does not include signature confirmation. He further knew that Paypal would refund his money without signature confirmation to the detriment of the Plaintiffs.

35. Saunders on several occasions inquired about the Plaintiffs' insurance on the item, as showing his intent to keep both the item and his funds prior to its delivery.

36. In reliance on those promises and representations—which, on information and belief, were knowingly false when made Plaintiffs shipped TOS39 to Saunders for which they has not been paid.

37. Plaintiffs reasonably and justifiably relied upon Saunder's misrepresentations and omissions to their detriment, and have suffered substantial damages, including not getting paid the amounts promised.

38. As a direct and proximate result of Saunders's fraud and fraudulent inducement, Plaintiffs have suffered damages in an amount to be determined at trial, including, but not limited to, the balance due and owing for TOS39, pre and post- judgment interest, and Plaintiffs' reasonable attorneys' fees and costs associated with bringing this action.

SECOND CAUSE OF ACTION
(Conversion - Saunders)

39. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 38 above, as if fully set forth herein.

40. By obtaining a fraudulent refund of his funds from Paypal, originally used to purchase TOS39, Defendant Saunders has converted the rare comic book, the title to which was never vested lawfully to Saunders, and that rightfully belongs to Plaintiffs.

41. Defendant Saunders should restore to the Plaintiffs TOS39, or in the alternative any and all proceeds from the sale of the same, in whatever form, including pre and post- judgment interest, Plaintiffs' reasonable attorneys' fees and costs associated with bringing this action.

THIRD CAUSE OF ACTION
(Unjust Enrichment - Saunders)

42. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 41 above, as if fully set forth herein.

43. Saunders has been enriched by his misconduct.

44. Specifically, Saunders claimed he did not receive TOS39 and had his funds fraudulently returned by Paypal. Given that Saunders has not paid Plaintiff for TOS39, Saunders has been enriched at Plaintiffs' expense.

45. Saunders has knowingly accepted the benefit he received from the Plaintiffs and has failed to make payment.

46. Under the circumstances, equity and good conscience require Saunders to make a full payment to Plaintiffs.

47. As a direct and proximate result of Saunders' failure to make payment for the goods that he has received, Plaintiffs have suffered damages in an amount to be determined at trial, including, but not limited to, the balance due and owing for TOS39, pre and post-judgment interest, Plaintiffs' reasonable attorneys' fees and costs associated with bringing this action.

FOURTH CAUSE OF ACTION
(Breach of Implied Covenant of Good Faith
and Fair Dealing - Saunders)

48. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 47 above, as if fully set forth herein.

49. The transaction to purchase TOS39 constitutes a contractual agreement between Saunders and the Plaintiffs.

50. Plaintiffs fully performed their obligations under the contract by delivery of TOS39 to Saunders.

51. The clear and unambiguous terms of the contract required payment to the Plaintiffs for TOS39.

52. Defendant Saunders has breached the implied covenant of good faith and fair dealing by, among other things: (i) withholding full payment, (ii) fraudulently requesting return of

his payment from Paypal, and (iii) with full knowledge that he was in fact obligated to make payment, falsely stated he did not receive TOS39 despite delivery confirmation.

53. Defendant Saunders has failed to remit payment in bad faith with full knowledge of the adverse consequences that his failure to make payment would have on Plaintiffs.

54. As a result of Saunders' breach of the implied covenant of good faith and fair dealing, as described above, Plaintiffs have suffered damages in an amount to be determined at trial, including the balance due and owing for TOS39, pre and post-judgment interest, Plaintiffs' reasonable attorneys' fees and costs associated with bringing this action.

FIFTH CAUSE OF ACTION
(Civil Conspiracy – eBay & Paypal)

55. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 54 above, as if fully set forth herein.

56. Defendants eBay and Paypal, as well as other unnamed co-conspirators, who include eBay and Paypal employee, staff, administrators, conspired to defraud users into using their shipping and payment systems.

57. Defendant Paypal was a wholly owned subsidiary of eBay from 2002 to 2014 and therefore acted as a unified corporation during this time. Paypal and eBay are well versed in each others terms and conditions as well as customary practices.

58. eBay continues to use Paypal as its exclusive online payment processing platform.

59. eBay and Paypal know that USPS does not provide signature confirmation for Priority Mail International Shipments. Attempting to include signature confirmation for international shipping through USPS returns an error. [See, "Exhibit A."]

60. eBay knows that Paypal will return a buyer's money if they claim non-receipt without signature confirmation, yet intentionally continues to limit international shipping options to only USPS. Similarly, Paypal returns international fraudsters' money despite being shown proof of the delivery in the only manner allowed by its co-conspirator eBay.

61. Both eBay and Paypal receive fees for allowing these international sales and are therefore inducing Sellers such as Plaintiffs to use their exclusive platforms.

62. eBay and Paypal are participating in a conspiratorial scheme to defraud customers through their integrated systems.

63. eBay and Paypal are engaging in a pattern of conduct allowing Sellers to be defrauded while benefitting from the fees on the fraudulent transactions.

64. As a direct and proximate result of Defendants eBay's and Paypal's actions, Plaintiffs have been damaged and continue to be damaged in the future in an amount to be determined at trial.

65. The conduct was done to further each Defendants' own financial interests. As a direct and proximate result of the conduct by Defendants eBay and Paypal, Plaintiffs have suffered damages and continue to suffer damages. Plaintiffs hereby demand actual, compensatory and other damages from Defendants, jointly and each individually, in an amount to be proven at trial.

SIXTH CAUSE OF ACTION
(Aiding and Abetting in Fraud – eBay & Paypal)

66. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 65 above, as if fully set forth herein.

67. As alleged more fully above, both Defendants eBay and Paypal knew that fraud was being committed by Defendant Saunders against the Plaintiffs.

68. Both Defendants eBay and Paypal gave substantial assistance and encouragement to Defendant Saunders in effectuating the fraud through their actions, limiting Plaintiffs to using USPS Priority International Mail, which does not allow signature confirmation. They then refunded Saunders' money despite delivery confirmation.

69. Each Defendants' conduct was a substantial factor in causing harm to the Plaintiffs.

70. The conduct was done to further each Defendants' own financial interests. As a direct and proximate result of the conduct by Defendants eBay and Paypal, Plaintiffs have suffered damages and continue to suffer damages. Plaintiffs hereby demand actual, compensatory and other damages from Defendants, jointly and each individually, in an amount to be proven at trial.

SEVENTH CAUSE OF ACTION
(Violation of 15 U.S.C. §§ 1-7 – eBay & Paypal)

71. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 70 above, as if fully set forth herein.

72. As alleged more fully above, both Defendants eBay and Paypal knew and were aware of the unlawful, unfair or fraudulent business acts or practices against Plaintiffs in violation of 15 U.S.C. §§ 1-7. Defendants eBay and Paypal knowingly directed, participated and cooperated together in the wrongful conduct described above, and each Defendants' conduct was a substantial factor in causing harm to the Plaintiffs.

73. The conduct was done to further each Defendants' own financial interests. As a direct and proximate result of the conduct by Defendants eBay and Paypal, Plaintiffs have suffered damages and continue to suffer damages. Plaintiffs hereby demand actual, compensatory and other damages from Defendants, jointly and each individually, in an amount to be proven at trial.

EIGHTH CAUSE OF ACTION
(Deceptive Trade Practices – eBay & Paypal)

74. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 73 above, as if fully set forth herein.

75. As alleged more fully above, both Defendants eBay and Paypal knew and were aware of the unlawful, unfair or fraudulent business acts or practices against Plaintiffs in violation of Common Law. Defendants eBay and Paypal knowingly directed, participated and cooperated together in the wrongful conduct described above, and each Defendants' conduct was a substantial factor in causing harm to the Plaintiffs.

76. The conduct was done to further each Defendants' own financial interests. As a direct and proximate result of the conduct by Defendants eBay and Paypal, Plaintiffs have suffered damages and continue to suffer damages. Plaintiffs hereby demand actual, compensatory and other damages from Defendants, jointly and each individually, in an amount to be proven at trial.

NINTH CAUSE OF ACTION
(Violation of NY General Business Law §349 – eBay & Paypal)

77. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 76 above, as if fully set forth herein.

78. As alleged more fully above, both Defendants eBay and Paypal knew and were aware of the unlawful, unfair or fraudulent business acts or practices against Plaintiffs in violation of NYGBL §349. Defendants eBay and Paypal knowingly directed, participated and cooperated together in the wrongful conduct described above, and each Defendants' conduct was a substantial factor in causing harm to the Plaintiffs.

79. The conduct was done to further each Defendants' own financial interests. As a direct and proximate result of the conduct by Defendants eBay and Paypal, Plaintiffs have suffered damages and continue to suffer damages. Plaintiffs hereby demand actual, compensatory and other damages from Defendants, jointly and each individually, in an amount to be proven at trial.

TENTH CAUSE OF ACTION
(Violation of 18 U.S.C § 1962(c) – All Defendants)

80. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 79 above, as if fully set forth herein.

The RICO Enterprise

81. At all relevant times, Defendants, and each of them, unlawfully, knowingly and intentionally conducted and participated, directly and indirectly, in the conduct of fraudulent affairs through a pattern of racketeering activities as set forth below, in violation of Section 1962(c) of RICO, 18 U.S.C § 1962(c).

82. Saunders, eBay and Paypal formed an association-in-fact for the common purpose of unlawfully, fraudulently, and deceptively generating fees while allowing fraudulent out of country purchasers to receive their products and get their money refunded. eBay knows that Paypal will return a buyer's money if they claim non-receipt without signature confirmation, yet intentionally continues to limit international shipping options, for items over \$2,500, to only USPS. Similarly, Paypal returns international fraudsters' money despite being shown proof of the delivery in the only manner allowed by its co-conspirator eBay. Since the two companies were one corporate entity from 2002 to 2014, the practice was known by the Defendants. eBay and Paypal are aware that Saunders is committing fraud using their platforms. At all times, Defendants knew and intended to defraud consumers by means of this practice, thereby maximizing their respective profits in the

process. This association-in-fact constitutes an “enterprise” within the meaning of Section 1961(4) of RICO, 18 U.S.C § 1961(4).

83. At all times, Defendants, and each of them, were “persons” as that term is defined in Section 1961(3) of RICO, 18 U.S.C § 1961(3) and are legally distinct from the enterprise.

84. At all relevant times, the enterprise as described herein was engaged in, and its activities affected, interstate commerce within the meaning of Section 1962(c) of RICO, 18 U.S.C § 1962(c).

Racketeering Activity and Predicate Acts

85. Defendants, each and each of them, did willfully and with purpose to defraud customers, including Plaintiffs, and to obtain consumers’ money or property by means of false pretenses, engaged in fraudulent conduct constituting wire and mail fraud in violation of 18 U.S.C § 1343 and 1341, by engaging in the following acts:

- a. Forming and maintaining the RICO enterprise;
- b. Forcing customers to use USPS Priority International Mail for items over \$2,500, which does not allow signature confirmation and then allowing refunds if there is delivery confirmation without signature confirmation;
- c. Fraudulently concealing the conflicting terms and conditions of eBay and Paypal claims;
- d. Receiving products and fraudulently requesting funds be returned and receiving said funds despite delivery.

86. By virtue of the foregoing fraudulent activities, Defendants have engaged in a pervasive pattern of unlawful and unfair business practices, causing harm to Plaintiffs and others.

Defendants' fraudulent conduct, as described above, constitutes a scheme or artifice to defraud Plaintiffs and others.

87. In furtherance of and for the purposes of executing the foregoing fraudulent and illegal course of conduct and scheme to defraud, Defendants used and caused to be used, interstate wire and mail communications to transmit or disseminate false, fraudulent and misleading communications and information, in violation of the wire and mail fraud statutes, 18 U.S.C §§ 1343 and 1341. Defendants' use of interstate wire for the transfer and removal of funds from Plaintiffs banking account is a violation of the statutes.

88. The use of the interstate wire and mail were made in furtherance of the Defendants' scheme to defraud the Plaintiffs and others and to obtain money and property by false pretenses.

89. Each interstate wire and mail communication that was made in furtherance of Defendants' scheme to defraud Plaintiffs and to obtain their money and property by false pretenses constitutes a separate and distinct act of "racketeering activit(ies)," as the term is defined in Section 1961(1) of RICO, 18 U.S.C §1961(c).

90. Defendants each committed and/or aided and abetted the commission of these acts of a "racketeering activity".

91. The predicate acts are common to the Defendants' scheme to conduct the affairs of the RICO enterprise, and the acts are continuing and threatening to continue indefinitely. These predicate acts are chargeable and indictable, as required under Section 1961(1) of RICO, 18 U.S.C §1961(1).

92. The racketeering activities were and are related by virtue of common participants, common victims (Plaintiffs and others), a common structure and method of commission, a common purpose, and a common result of allowing fraud on items being sold outside of the United States,

thereby defrauding Plaintiffs and others of significant monies and unjustly enriching the Defendants and their collaborators.

93. The racketeering activities are distinct from the RICO enterprise. The enterprise, as an association-in-fact, was formed to facilitate the payment for online sales on the eBay platform and to generate fees regardless of an international buyer's unlawful, fraudulent and deceptive acts through wire fraud. Such acts of the Defendants eBay and Paypal and their collaborators allow them to maintain profitability and conduct enterprises for the purpose of defrauding customers.

Causation

94. As a direct and proximate result of the racketeering activities, Plaintiffs were defrauded out of their copy of the rare comic book TOS39, as well as any funds they would have received from the sale thereof. Thus, Plaintiffs have been "injured in their property" and have standing to sue Defendants and recover damages and costs of bringing this action under Section 1962(c) of RICO, 18 U.S.C §1962(c).

95. By virtue of Section 1962(c) of RICO, 18 U.S.C §1962(c), Defendants, and each of them, are jointly and severally liable to Plaintiffs for three times the damages that Plaintiffs have suffered as a result of Defendants' scheme to defraud customers.

ELEVENTH CAUSE OF ACTION **(Violation of 18 U.S.C § 1962(d) – All Defendants)**

96. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 96 above, as if fully set forth herein.

97. Defendants willfully combined, conspired and agreed to conduct and participate, directly and/or indirectly, in the conduct of the enterprise's affairs through a pattern of racketeering activities, in violation of Section 1962(d) of RICO, 18 U.S.C §1962(c), therefore violating Section

1962(d) of RICO, 18 U.S.C §1962(d). These racketeering activities consisted of repeated violations of federal wire fraud, mail fraud and bank fraud statutes.

98. Defendants knew of, agreed to, and acted in furtherance of the overall objective of the conspiracy by, inter alia, forcing customers to use USPS Priority International Mail for items over \$2,500, which does not allow signature confirmation and then allowing refunds if there is delivery confirmation without signature confirmation.

99. As a direct and proximate result of the racketeering activities, Plaintiffs were defrauded out of their copy of the rare comic book TOS39, as well as any funds they would have received from the sale thereof. Thus, Plaintiffs have been injured in their property and have standing to sue Defendants and recover damages and costs of bringing this action under Section 1962(d) of RICO, 18 U.S.C §1962(d).

100. By virtue of Section 1962(d) of RICO, 18 U.S.C §1962(d), Defendants, and each of them, are jointly and severally liable to Plaintiffs for three times the damages that Plaintiffs have suffered as a result of Defendants' scheme to defraud customers.

TWELFTH CAUSE OF ACTION
(Aiding and Abetting Wire Fraud in violation of 18 U.S.C. §1343 - Paypal)

101. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 100 above, as if fully set forth herein.

102. Paypal aided and abetted Saunders in conspiring to violate 18 U.S.C. §1343.

103. Despite being provided with overwhelming evidence of delivery of TOS39 to Saunders, they returned his funds without any investigation and without Saunders providing an evidence of the contrary.

104. Without Paypal's cooperation, Saunders would have been unable to receive his funds back completing his fraud on the Plaintiffs.

105. Defendant Paypal aided and abetted Saunders in wire fraud with full knowledge that the Plaintiffs delivered TOS39 to Saunders.

106. As a direct and proximate result of Paypal's aiding and abetting of Saunders' fraudulent scheme, Plaintiffs have suffered damages in an amount to be determined at trial, including, but not limited to, the balance due and owing for TOS39, pre and post- judgment interest, Plaintiffs' reasonable attorneys' fees and costs associated with bringing this action.

THIRTEENTH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress – All Defendants)

107. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 106 above, as if fully set forth herein.

108. Defendant Saunders acted in a shocking, outrageous and extreme manner by, among other things, through fraud, obtained possession of Plaintiffs' TOS39, which Plaintiff James A. Cracolici collected as a child and held on to for twenty-nine (29) years.

109. Defendant eBay and Paypal acted in a shocking, outrageous and extreme manner by, among other things by aiding and abetting Saunders in fraudulently obtaining possession of Plaintiffs' TOS39, which Plaintiff James A. Cracolici collected as a child and held on to for twenty-nine (29) years.

110. Defendant Paypal acted in a shocking, outrageous and extreme manner when returning the funds to Saunders after he fraudulently obtained possession of Plaintiffs' TOS39, which Plaintiff James A. Cracolici collected as a child and held on to for twenty-nine (29) years.

111. As a direct and proximate result of losing both possession of a child hood item, as well as the value therefrom, due to the actions of the Defendants, Plaintiff James A. Cracolici has been emotionally distraught. Defendants demonstrated the intent to cause, or disregarded a substantial probability of causing Plaintiff James A. Cracolici severe emotional distress.

112. Defendants' actions were a direct and proximate cause of Plaintiff James A. Cracolici's emotional distress.

113. Plaintiffs have incurred, and will continue to incur, significant damage as a direct result of Defendants' intentional infliction of emotional distress in an amount to be determined at trial.

FOURTEENTH CAUSE OF ACTION
(Statutory & Punitive Damages – eBay & Paypal)

114. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 113 above, as if fully set forth herein.

115. Defendants eBay and Paypal acted willfully, oppressively, maliciously, and in wanton conscious disregard of the rights of Plaintiffs. Accordingly, punitive damages should be assessed against them in an amount that will be sufficient to discourage them and others from engaging in such fraudulent conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully demand judgement on their Complaint as follows:

A. On the First Cause of Action for Fraud and Fraudulent Inducement, an amount to be determined at trial, but no less than \$7,733.67, plus Plaintiffs' attorneys' fees, costs, and both pre- and post- judgment interest at the Additional Interest rate;

B. On the Second Cause of Action for Conversion; an Order directing the return of Tales of Suspense 39 or in the alternative no less than \$7,733.67, plus Plaintiffs' attorneys' fees, costs, and both pre- and post- judgment interest at the Additional Interest rate;

C. On the Third Cause of Action for Unjust Enrichment, an amount to be determined at trial, but no less than \$7,733.67, plus Plaintiffs' attorneys' fees, costs, and both pre- and post- judgment interest at the Additional Interest rate;

D. On the Fourth Cause of Action for Breach of Implied Covenant of Good Faith and Fair Dealings, an amount to be determined at trial, but no less than \$7,733.67, plus Plaintiffs' attorneys' fees, costs, and both pre- and post- judgment interest at the Additional Interest rate;

E. On the Fifth Cause of Action for Civil Conspiracy, an amount to be determined at trial, but no less than \$7,733.67, plus Plaintiffs' attorneys' fees, costs, and both pre- and post- judgment interest at the Additional Interest rate;

F. On the Sixth Cause of Action for Aiding and Abetting in Fraud, an amount to be determined at trial, but no less than \$7,733.67, plus Plaintiffs' attorneys' fees, costs, and both pre- and post- judgment interest at the Additional Interest rate;

G. On the Seventh Cause of Action for violation of 15 U.S.C. §§ 1-7, an amount to be determined at trial, but no less than \$7,733.67, plus Plaintiffs' attorneys' fees, costs, and both pre- and post- judgment interest at the Additional Interest rate;

H. On the Eighth Cause of Action for Deceptive Trade Practices, an amount to be determined at trial, but no less than \$7,733.67, plus Plaintiffs' attorneys' fees, costs, and both pre- and post- judgment interest at the Additional Interest rate;

I. On the Ninth Cause of Action for Violation of NY General Business Law §349, an amount to be determined at trial, but no less than \$7,733.67, plus Plaintiffs' attorneys' fees, costs, and both pre- and post- judgment interest at the Additional Interest rate;

J. On the Tenth Cause of Action for Violation of 18 U.S.C § 1962(c), an amount to be determined at trial, but no less than treble damages in the amount of \$23,201.01, plus Plaintiffs' attorneys' fees, costs, and both pre- and post- judgment interest at the Additional Interest rate;

K. On the Eleventh Cause of Action for Violation of 18 U.S.C § 1962(d), an amount to be determined at trial, but no less than treble damages in the amount of \$23,201.01, plus Plaintiffs' attorneys' fees, costs, and both pre- and post- judgment interest at the Additional Interest rate;

L. On the Twelfth Cause of Action for Aiding and Abetting Wire Fraud in violation of 18 U.S.C. §1343, an amount to be determined at trial, but no less than damages in the amount of \$7,733.67, plus Plaintiffs' attorneys' fees, costs, and both pre- and post- judgment interest at the Additional Interest rate;

M. On the Thirteenth Cause of Action for Intentional Infliction of Emotional Distress, an amount to be determined at trial, plus Plaintiffs' attorneys' fees, costs, and both pre- and post- judgment interest at the Additional Interest rate;

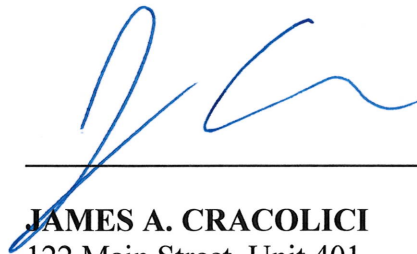
N. On the Fourteenth Cause of Action for Statutory and Punitive Damages, an amount to be determined at trial, plus Plaintiffs' attorneys' fees, costs, and both pre- and post- judgment interest at the Additional Interest rate;

O. An order awarding Plaintiffs' its costs, expenses and attorneys' fees; and

P. An Order granting Plaintiffs such other and further relief as may be just and proper.

PLAINTIFFS DEMANDS A TRIAL BY JURY FOR ALL CLAIMS SO TRIABLE

Dated: April 30, 2017
New York, New York



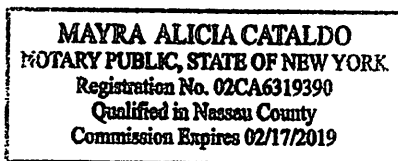
JAMES A. CRACOLICI
122 Main Street, Unit 401
Nyack, NY 10960
Tel: (845) 820-6831
E-mail: cracolicilaw@gmail.com
Attorney for Plaintiffs

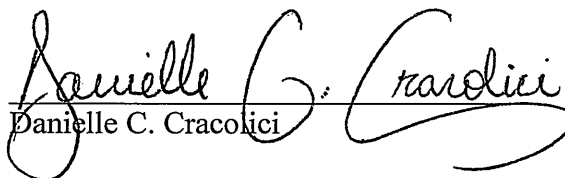
VERIFICATION

I, Danielle C. Cracolici, declare as follows:

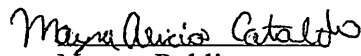
I am a Plaintiff in the present case, a citizen of the United States of America, and a resident of the State of New York.

I have read the foregoing Complaint and know the contents thereof. The same are true to my knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters, I believe them to be true.




Danielle C. Cracolici

Sworn before me this 30th day of April, 2018

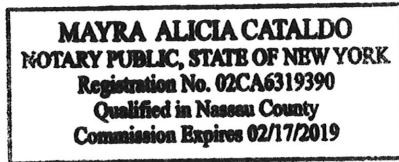

Notary Public

VERIFICATION

I, James A. Cracolici, declare as follows:

I am a Plaintiff in the present case, a citizen of the United States of America, and a resident of the State of New York.

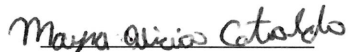
I have read the foregoing Complaint and know the contents thereof. The same are true to my knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters, I believe them to be true.





James A. Cracolici

Sworn before me this 30th day of April, 2018


Notary Public